

1 Frank A. Silane (State Bar No.: 90940)  
2 Rod D. Margo (State Bar No.: 97706)  
3 Scott D. Cunningham (State Bar No.: 200413)  
4 CONDON & FORSYTH LLP  
5 1901 Avenue of the Stars, Suite 850  
6 Los Angeles, California 90067-6010  
7 Telephone: (310) 557-2030  
8 Facsimile: (310) 557-1299  
9 Email: fsilane@condonlaw.com  
10 Email: rmargo@condonlaw.com  
11 Email: scunningham@condonlaw.com

12 -and-

13 Marshall S. Turner (application for admission pro hac vice pending)  
14 CONDON & FORSYTH LLP  
15 7 Times Square  
16 New York, NY 10036  
17 Telephone: (212) 490-9100  
18 Facsimile: (212) 370-4453  
19 Email: mturner@condonlaw.com

20 Attorneys for Plaintiff and Counter-Defendant  
21 ALL NIPPON AIRWAYS COMPANY, LTD.

22 UNITED STATES DISTRICT COURT  
23  
24 NORTHERN DISTRICT OF CALIFORNIA

25 ALL NIPPON AIRWAYS COMPANY,) LTD.,

26 Plaintiff,

27 vs.

28 UNITED AIR LINES, INC.,

Defendant.

UNITED AIR LINES, INC.,

Counter-Plaintiff,

vs.

ALL NIPPON AIRWAYS COMPANY,) LTD.,

Counter-Defendant.

Case No. C 07 3422 EDL

**ANSWER AND AFFIRMATIVE  
DEFENSES OF ALL NIPPON  
AIRWAYS COMPANY, LTD. TO  
DEFENDANT'S COUNTER-  
COMPLAINT**

1 Plaintiff and Counter-Defendant, ALL NIPPON AIRWAYS COMPANY,  
2 LTD. (hereinafter "ANA"), by its attorneys, Condon & Forsyth LLP, hereby  
3 answers defendant's counter-complaint as follows:

4  
5 **THE PARTIES**

- 6 1. ANA denies the allegations in paragraph 1 of the Counter-Complaint.  
7 2. ANA admits the allegations in paragraph 2 of the Counter-Complaint.

8  
9 **JURISDICTION**

- 10  
11 3. ANA admits the allegations in paragraph 3 of the Counter-Complaint,  
12 except ANA denies that damages sustained by UAL exceed \$700,000.00.

13  
14 **INTRADISTRICT ASSIGNMENT**

- 15  
16 4. ANA admits the allegations in paragraph 4 of the Counter-Complaint.

17  
18 **GENERAL ALLEGATIONS**

- 19  
20 5. ANA admits the allegations in paragraph 5 of the Counter-Complaint  
21 to the extent that on October 7, 2003 at San Francisco International Airport, San  
22 Francisco, California, an ANA Boeing B777 aircraft (Reg. No. JA709A)  
23 designated as ANA's Flight NH007 ("NH007") was involved in a collision on the  
24 ground with a UAL Boeing B777 aircraft (Reg. No. N222UA) designated as  
25 UAL's Flight UA809 ("UA809"). Except as expressly admitted, ANA denies the  
26 allegations contained in paragraph 5 of the Counter-Complaint.

1 6. ANA denies the allegations in paragraph 6 of the Counter-Complaint.

2 7. ANA admits the allegations in paragraph 7 of the Counter-Complaint.

3  
4 **AS TO COUNT ONE AGAINST ANA**

5  
6 8. ANA repeats, reiterates and realleges each and every allegation,  
7 admission and denial to paragraphs 1 through 7, inclusive, of the Counter-  
8 Complaint with the same force and effect as if herein set forth in full.

9 9. The allegations in paragraph 9 of the Counter-Complaint constitute a  
10 legal assertion and need not be specifically admitted or denied by ANA, but ANA  
11 denies that it breached any legal duty owed.

12 10. ANA denies the allegations in paragraph 10 of the Counter-  
13 Complaint.

14 11. ANA denies the allegations in paragraph 11 of the Counter-  
15 Complaint.

16 12. ANA denies the allegations in paragraph 12 of the Counter-  
17 Complaint.

18 13. ANA denies the allegations in paragraph 13 of the Counter-  
19 Complaint.

20  
21 **AS TO COUNT TWO AGAINST ANA**

22  
23 14. ANA repeats, reiterates and realleges each and every allegation,  
24 admission and denial to paragraphs 1 through 13, inclusive, of the Counter-  
25 Complaint with the same force and effect as if herein set forth in full.

26 15. ANA denies the allegations in paragraph 15 of the Counter-  
27

1 Complaint.

2 16. ANA denies the allegations in paragraph 16 of the Counter-  
3 Complaint.

4 17. The allegations in paragraph 17 of the Counter-Complaint constitute a  
5 legal assertion and need not be specifically admitted or denied by ANA.

6 18. The allegations in paragraph 18 of the Counter-Complaint constitute a  
7 legal assertion and need not be specifically admitted or denied by ANA.

8 19. ANA denies the allegations in paragraph 19 of the Counter-  
9 Complaint.

10 20. ANA denies the allegations in paragraph 20 of the Counter-  
11 Complaint.

12  
13 **AS TO COUNT THREE AGAINST ANA**  
14

15 21. ANA repeats, reiterates and realleges each and every allegation,  
16 admission and denial to paragraphs 1 through 20, inclusive, of the Counter-  
17 Complaint with the same force and effect as if herein set forth in full.

18 22. ANA denies the allegations in paragraph 22 of the Counter-Complaint  
19 except admits that ANA and UAL entered into a Standard Ground Handling  
20 Agreement and an "Annex A" and "Annex B" thereto.

21 23. ANA denies the allegations in paragraph 23 of the Counter-Complaint  
22 as "Annex A" of Exhibit 1 to the Counter-Complaint was not in effect at the time  
23 of the accident and is not applicable to any of the facts or circumstances related to  
24 this accident or claim.

25 24. ANA denies the allegations in paragraph 24 of the Counter-Complaint  
26 as "Annex B" of Exhibit 1 to the Counter-Complaint was not in effect at the time  
27

1 of the accident and is not applicable to any of the facts or circumstances related to  
2 this accident or claim.

3 25. ANA denies knowledge or information sufficient to form a belief as to  
4 the truth of the allegations in paragraph 25 of the Counter-Complaint.

5 26. ANA denies the allegations in paragraph 26 of the Counter-  
6 Complaint.

7 27. ANA denies the allegations in paragraph 27 of the Counter-  
8 Complaint.

9 28. ANA denies the allegations in paragraph 28 of the Counter-  
10 Complaint.

11 **AS TO COUNT FOUR AGAINST ANA**

12  
13 29. ANA repeats, reiterates and realleges each and every allegation,  
14 admission and denial to paragraphs 1 through 28, inclusive, of the Counter-  
15 Complaint with the same force and effect as if herein set forth in full.

16 30. ANA denies the allegations in paragraph 30 of the Counter-Complaint  
17 except admits that ANA and UAL entered into a Standard Ground Handling  
18 Agreement and an "Annex A" and "Annex B" thereto.

19 31. ANA denies the allegations in paragraph 31 of the Counter-Complaint  
20 as "Annex A" of Exhibit 1 to the Counter-Complaint was not in effect at the time  
21 of the accident and is not applicable to any of the facts or circumstances related to  
22 this accident or claim.

23 32. ANA denies the allegations in paragraph 32 of the Counter-Complaint  
24 as "Annex B" of Exhibit 1 to the Counter-Complaint was not in effect at the time  
25 of the accident and is not applicable to any of the facts or circumstances related to  
26 this accident or claim.

1 33. ANA denies the allegations in paragraph 33 of the Counter-  
2 Complaint.

3 34. The allegation in paragraph 34 of the Counter-Complaint constitutes a  
4 legal assertion and need not be specifically admitted or denied by ANA, but it is  
5 denied.

6 35. ANA denies the allegations in paragraph 35 of the Counter-  
7 Complaint.

8 **FIRST AFFIRMATIVE DEFENSE**  
9 **TO EACH AND EVERY CAUSE OF ACTION**

10 36. UAL's Counter-Complaint fails to state a claim against ANA upon  
11 which relief can be granted.

12 **SECOND AFFIRMATIVE DEFENSE**  
13 **TO EACH AND EVERY CAUSE OF ACTION**

14 37. Any injury, damage, or loss sustained by UAL, if such occurred, was  
15 proximately caused and contributed to by UAL'S own negligence or culpable  
16 conduct. Accordingly, ANA is not liable to UAL or, alternatively, UAL's  
17 recovery, if any, should be reduced by the amount of negligence attributable to the  
18 conduct of UAL.

19 **THIRD AFFIRMATIVE DEFENSE**  
20 **TO EACH AND EVERY CAUSE OF ACTION**

21 38. The incident alleged in the Counter-Complaint, and the damages UAL  
22 alleges it sustained as a result of the incident, were due to the negligence or other  
23 wrongful acts or omissions of other parties, their agents or employees, or by others  
24 unknown at this time over whom defendant ANA had no control at any time  
25  
26  
27



1 relevant hereto; however, in the event that a finding is made that negligence exists  
 2 on the part of ANA, which proximately contributed to UAL's damages alleged in  
 3 the Counter-Complaint, ANA's liability, if any, should be reduced by an amount  
 4 proportionate to the amount by which the comparative negligence of such other  
 5 persons or entities contributed to the happening of the alleged incident and  
 6 damages upon which plaintiff seeks recovery.

7  
 8 **FOURTH AFFIRMATIVE DEFENSE**  
 9 **TO EACH AND EVERY CAUSE OF ACTION**

10 39. UAL's damages, if any, are due to the acts or omissions of persons or  
 11 entities other than ANA; however, in the event a finding is made that liability  
 12 exists on the part of ANA, which liability is expressly denied, ANA is entitled to  
 13 indemnity and/or contribution from such persons or entities in direct proportion to  
 14 their respective fault.

15  
 16 **FIFTH AFFIRMATIVE DEFENSE**  
 17 **TO EACH AND EVERY CAUSE OF ACTION**

18 40. The injuries and damages allegedly suffered by UAL were caused by  
 19 intervening and superceding causes, not caused by ANA.

20  
 21 **SIXTH AFFIRMATIVE DEFENSE**  
 22 **TO EACH AND EVERY CAUSE OF ACTION**

23 41. UAL failed to exercise reasonable care and diligence to mitigate its  
 24 alleged damages, if any, and on this ground UAL is barred from asserting its  
 25 claims against ANA.

**SEVENTH AFFIRMATIVE DEFENSE  
TO EACH AND EVERY CAUSE OF ACTION**

42. If any damages are awarded to UAL, ANA is entitled to a reduction for all amounts paid or available from all collateral sources.

**EIGHTH AFFIRMATIVE DEFENSE  
TO EACH AND EVERY CAUSE OF ACTION**

43. UAL's violation of federally enacted regulations, including but not limited to the Federal Aviation Regulations, defeats UAL's claims in whole or in part.

44. ANA intends to rely upon such other affirmative defenses as become discovered through discovery and up to the date of trial and reserves the right to modify the foregoing affirmative defenses if necessary.

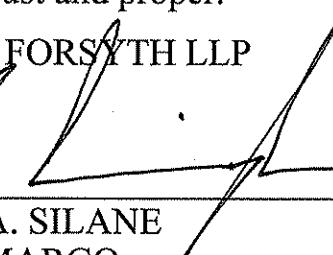
WHEREFORE, ANA prays as follows:

1. That UAL take nothing by reason of UAL's Counter-Complaint herein and for judgment in favor of ANA; and
2. For such relief as the Court may deem just and proper.

Dated: July 24, 2007

CONDON & FORSYTH LLP

By: 

  
FRANK A. SILANE  
ROD D. MARGO  
SCOTT D. CUNNINGHAM  
MARSHALL S. TURNER  
Attorneys for Plaintiff and Counter-Defendant  
ALL NIPPON AIRWAYS COMPANY, LTD.



**PROOF OF SERVICE**

**STATE OF CALIFORNIA COUNTY OF LOS ANGELES**

I am a resident of the State of California, over the age of eighteen years, and not a party to the within action. My business address is 1901 Avenue of the Stars, Suite 850, Los Angeles, California 90067-6010. On July 24, 2007, I served the within document:

**ANSWER AND AFFIRMATIVE DEFENSES OF ALL NIPPON AIRWAYS COMPANY, LTD. TO DEFENDANT'S COUNTER-COMPLAINT**

☐ **(By Facsimile):** I caused the above-referenced document(s) to be transmitted by facsimile machine to the person(s) at the address(es) set forth below

☒ **(By Mail):** As Follows: I am "readily familiar" with the firm's practice of collection and processing correspondence for mailing. Under that practice it would be deposited with the U.S. Postal Service on that same day with postage thereon fully prepaid at Los Angeles, California in the ordinary course of business. I am aware that on motion of the party served, service is presumed invalid if postal cancellation date or postage meter date is more than on day after the date of deposit for mailing in affidavit.

☐ **(By Personal Service):** I caused the above-referenced document(s) to be personally delivered by hand to the person(s) at the address(es) set forth below.

☐ **(By Overnight Courier):** I caused the above-referenced document(s) to be delivered by an overnight courier service to the person(s) at the address(es) set forth below.

**SEE ATTACHED SERVICE LIST**

**(Federal)** I declare I am employed in the office of a member of the bar of this court at whose direction the service was made.

Executed on July 24, 2007, at Los Angeles, California.

Elisabeth Sillars  
Elisabeth Sillars

SERVICE LIST

Scott R. Torpey, Esq.  
Jaffe Raitt Heuer & Weiss, P.C.  
The American Center  
27777 Franklin Road, Suite 2500  
Southfield, Michigan 48034

Jeffrey A. Worthe, Esq.  
Worthe, Hanson & Worthe  
1851 East First Street, Suite 900  
Santa Ana, California 92705

Marshall S. Turner, Esq.  
Condon & Forsyth LLP  
7 Times Square, 18<sup>th</sup> Floor  
New York, New York 10036